

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

A.B.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party in Interest.

F060676

(Super. Ct. No. 08CEJ300270-6)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jane Cardoza, Judge.

A.B., in pro. per., for Petitioner.

No appearance for Respondent.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

-ooOoo-

---

\*Before Wiseman, Acting P.J., Levy, J. and Kane, J.

Petitioner in propria persona seeks an extraordinary writ (Cal. Rules of Court, rule 8.452 (rule)) from the juvenile court's order setting a Welfare and Institutions Code section 366.26 hearing<sup>1</sup> as to his son A. We conclude his petition fails to comport with the procedural requirements of rule 8.452. Accordingly, we will dismiss the petition as facially inadequate.

### **STATEMENT OF THE CASE AND FACTS**

In December 2008, then 10-year-old A. was removed from the custody of his mother, Nichole, in large part because of her drug use. Two months before, A.'s five half-siblings were removed from Nichole's custody. At the time of A.'s removal, petitioner was incarcerated in state prison.

In March 2009, the juvenile court exercised dependency jurisdiction, denied Nichole and petitioner reunification services as to A. and set a section 366.26 hearing for July 2009. However, in the meantime, the department of social services (department) filed a petition pursuant to section 388 (section 388 petition) asking the juvenile court to vacate the section 366.26 hearing and provide Nichole reunification services as to A. The department explained that no one was willing to provide A. a permanent home. In addition, Nichole was participating in reunification services with A.'s siblings and A. had a positive relationship with Nichole, his half-siblings and his half-siblings' father, T.

In August 2009, the juvenile court granted the section 388 petition, vacated the section 366.26 hearing and granted Nichole reunification services. In December 2009, the juvenile court placed all six children with Nichole and T. under a plan of family maintenance. However, in April 2010, Nichole contacted the department and disclosed

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

that she relapsed and left the children in T.'s care. Her whereabouts subsequently became unknown.

The juvenile court allowed T.'s biological children to remain in his care under family maintenance but A. was removed and placed in foster care. T. expressed his interest in providing A. a permanent home either through adoption or legal guardianship.

In August 2010, the juvenile court terminated family maintenance services for Nichole and ordered a section 366.26 hearing as to A. Petitioner was incarcerated at the time of the hearing and waived his appearance. This petition ensued.<sup>2</sup>

### **DISCUSSION**

A lower court's judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Consequently, an "appellant must affirmatively demonstrate error by an adequate record." (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.) With respect to writ petitions challenging the setting of a section 366.26 hearing, rule 8.452 specifies, inter alia, that the writ petition must include a summary of the significant facts and identify contested legal points with citation to legal authority and argument. (Rule 8.452(b).) At a minimum, the writ petition must "adequately inform the court of the issues presented, point out the factual support for them in the record, and offer argument and authorities that will assist the court in resolving the contested issues." (*Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 583.)

In this case, petitioner does not provide a summary of the facts, citation to the appellate record, or legal authority to support a claim of juvenile court error. Rather, aside from identifying information, the writ petition is blank, including the space provided for specifying the grounds for error. The only other notation on the petition is a check mark indicating petitioner seeks visitation. Since petitioner fails to set forth a

---

<sup>2</sup> Nichole did not file a writ petition.

claim of error, his petition is facially inadequate and insufficient for review. Further, the issue of visitation must be raised first before the juvenile court. In light of the foregoing, we will dismiss the petition.

#### **DISPOSITION**

The petition for extraordinary writ is dismissed. This opinion is final forthwith as to this court.